

BEFORE THE IDAHO STATE BOARD OF
HEARING AID DEALERS AND FITTERS

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OCCUPATIONAL LICENSES

In the Matter of)

Case No. HAD-P2A-01-96-001

E.J.G. FITZGERALD,
License No. H-205,)

CONSENT ORDER

Respondent.)

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Information having been received by the Idaho State Board of Hearing Aid Dealers and Fitters (hereinafter BOARD) which constitutes sufficient grounds for the initiation of an administrative action is acknowledged by E.J.G. Fitzgerald (hereinafter RESPONDENT).

WHEREAS the parties mutually agree to settle the matter pending administrative Board action in an expeditious manner,

IT IS HEREBY STIPULATED AND AGREED between the undersigned parties that this matter shall be settled and resolved upon the following terms:

I.

1. The Board may regulate the practice of hearing aid dealing and fitting in the state of Idaho in accordance with title 54, chapter 29, Idaho Code, the Hearing Aid Dealers and Fitters Act.

2. Respondent is a licensee of the Idaho State Board of Hearing Aid Dealers and Fitters and holds license number H-205 to be a hearing aid dealer and fitter in the State of Idaho. Respondent's license is and has been in full force and effect at all times pertinent herein. Respondent's license is subject to the provisions of title 54, chapter 29, Idaho Code.

3. On May 10, 1994, Respondent accepted an order for two Starkey brand hearing aids from Mary F. Orcutt. Ms. Orcutt paid \$1100 for the Starkey aids.

4. During the course of servicing Ms. Orcutt's aids, Respondent represented to Ms. Orcutt that the aid was a "Starkey" aid.

5. On August 4, 1995, Ms. Orcutt learned that the aids she had received from Respondent were not "Starkey" brand. Respondent sold Ms. Orcutt "Perfect Ear" brand aids.

6. Respondent provided Ms. Orcutt a full refund of all monies paid for the Perfect Ear Aids.

7. Respondent's misrepresentation of the brand of hearing aids sold to Ms. Orcutt constitutes unethical conduct, as defined by Idaho Code §§ 54-2901(0) and 54-2912(3).

8. Respondent failed to execute a contract for the sale of hearing aids with Ms. Orcutt in violation of Idaho Code § 54-2903.

9. Respondent's failure to execute a contract in compliance with Idaho Code § 54-2903 is a pattern of practice of Respondent, as evidenced by complaint file HAD-01-95-009, May 4, 1995, closing letter attached as Exhibit 1; complaint file HAD-P5B-01-95-012, October 4, 1995, closing letter attached as Exhibit 2; and July 29, 1994, letter attached as Exhibit 3.

10. Respondent's misrepresentation of the brand of aids sold to Ms. Orcutt and repeated violations regarding the execution of written contracts for the sale of hearing aids constitutes grounds for disciplinary action against Respondent pursuant to Idaho Code § 54-2903 and 54-2912.

II.

I, E.J.G. Fitzgerald, by affixing my signature hereto, acknowledge that:

1. I have read and understand the allegations pending before the Board, as stated above in section I. I further understand that these allegations constitute cause for disciplinary action upon my license to practice hearing aid dealing and fitting in the State of Idaho.

2. I understand that I have the right to a full and complete hearing; the right to confront and cross-examine witnesses who would testify against me; the right to present evidence in my favor or to call witnesses in my behalf, or to so testify myself; the right to reconsideration; the right to appeal; and all rights accorded by the Administrative Procedure Act of the State of Idaho and the laws and rules governing the practice of hearing aid dealing and fitting in the State of Idaho. I hereby freely and voluntarily waive these rights in order to enter into this stipulation as a resolution of the pending allegations against me.

3. I understand that in signing this consent order I am enabling the Board to impose disciplinary action upon my license without further process.

4. I do not admit the foregoing findings of fact; however, I specifically waive my right to contest these findings in any subsequent proceedings before the Board.

III.

1. Based upon the foregoing stipulation, it is agreed that the Board may issue a decision and Order upon this stipulation whereby hearing aid dealers and fitters license number HAD-205, issued to Respondent E.J.G. Fitzgerald, is hereby placed on probation for a period of two years on the following conditions:

a. As a part of probation, Respondent is suspended from the practice of hearing aid dealing and fitting for a period of 30 days beginning; provided, however, that fifteen of the thirty days shall be stayed. The suspension shall commence on the effective date of this order.

b. Respondent shall pay \$250 in costs to the Board within thirty (30) days of the effective date of this order.

c. Respondent shall not violate any federal, state or local laws or rules governing the practice of hearing aid dealing and fitting in the State of Idaho.

2. The violation of any of the terms of this stipulation by Respondent will result in the revocation of the stay and Respondents license will be further suspended for

a period of 15 days. The Board therefore retains jurisdiction over this proceeding until all matters are finally resolved as set forth in this stipulation. Upon successful completion of probation, Respondent's license will be fully restored.

IV.

1. It is hereby agreed between the parties that this settlement agreement shall be presented to the Board with a recommendation for approval from the Attorney General's Office at the next regularly-scheduled meeting of the Board.

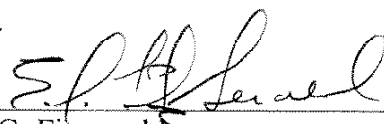
2. Respondent understands that the Board is free to accept or reject this settlement agreement, and if rejected by the Board, a formal complaint may be filed against the Respondent. Respondent hereby agrees to waive any right he may have to challenge the impartiality of the Board to hear the disciplinary complaint if, after review by the Board, this settlement agreement is rejected.

3. If the settlement agreement is not accepted by the Board, it shall be regarded as null and void. Admissions by the Respondent in the settlement agreement will not be regarded as evidence against him at the subsequent disciplinary hearing.

4. The Consent Order shall not become effective until it has been approved by a majority of the Board and endorsed by a representative member of the Board.

I have read the above stipulation fully and understand that by its terms I will be waiving certain rights accorded me under Idaho law. I also understand that by its terms the Idaho State Board of Hearing Aid Dealers and Fitters will issue an Order on this stipulation whereby my license to practice hearing aid dealing and fitting will be suspended and placed on probation, subject to the above delineated terms and conditions. I agree to the above stipulation for settlement.

DATED this 28 day of October, 1996.



E.J.G. Fitzgerald
Respondent

I concur in this stipulation and order.

DATED this 7th day of November 1996.

STATE OF IDAHO
OFFICE OF THE ATTORNEY GENERAL

By Nicole S. McKay
Nicole S. McKay
Deputy Attorney General

Pursuant to Idaho Code § 54-2914, the foregoing is adopted as the decision of the Board of Hearing Aid Dealers and Fitters in this matter and shall be effective on the 18 day of November, 1996. **IT IS SO ORDERED.**

IDAHO STATE BOARD
OF HEARING AID DEALERS AND FITTERS

By Dan F. McCuskey
Dan F. McCuskey
Acting Chairman